

Message Text

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PAGE 01 STATE 053474

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NAIROBI FOR NOZIGLIA

FOLLOWING REPEAT STATE 053474 ACTION NEW DELHI BOMBAY INFO LONDON
BONN BRUSSELS PARIS ROME THE HAGUE OTTAWA TOKYO MADRID EC BRUSSELS
IAEA VIENNA SEOUL BUENOS AIRES BRASILIA RIO DE JANEIRO STOCKHOLM
CAIRO BUCHAREST MEXICO TEL AVIV ISLAMABAD 04 MAR

QUOTE

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E.O. 11652: NA

TAGS: TECH, IN

SUBJECT: INTERVENTION IN U.S. NUCLEAR EXPORT LICENSING

",

REF: A. STATE 049812 B. NEW DELHI 3218 C. BOMBAY 0547

1. AS ANTICIPATED REFTEL A, ON MARCH 2, PETITIONS WERE
FILED BY THREE U.S. ENVIRONMENTAL ORGANIZATIONS (SIERRA
CLUB, UNION OF CONCERNED SCIENTISTS AND THE NATIONAL
RESOURCES DEFENSE COUNCIL) TO INTERVENE IN THE NUCLEAR
REGULATORY COMMISSION (NRC) CONSIDERATION OF TWO EXPORT
LICENSE APPLICATIONS COVERING THE SUPPLY OF ENRICHED

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PAGE 02 STATE 053474

URANIUM FOR THE INDIAN TARAPUR ATOMIC POWER STATION (TAPS).

ACTION RECEIVED SECOND-PAGE NEW YORK TIMES COVERAGE ON MARCH 3, AS WELL AS IN OTHER PAPERS, AND FURTHER WIDE-SPREAD PUBLICITY IS EXPECTED. TIMES ARTICLE INDICATED ONE PURPOSE OF PETITION WAS TO "FORCE BASIC CHANGES IN THE NUCLEAR EXPORT POLICY OF THE UNITED STATES."

2. NRC IS A REGULATORY AGENCY WHICH IS INDEPENDENT FROM THE EXECUTIVE BRANCH AND, THUS, IS NOT OBLIGATED TO FOLLOW PRESIDENTIAL FOREIGN POLICY GUIDANCE. THE ENERGY REORGANIZATION ACT OF 1974 GIVES NRC AUTHORITY FOR THE

THE ISSUANCE OF ALL NUCLEAR EXPORT LICENSES. IN CONSIDERING THE PETITION, NRC ACTIONS ARE PRESCRIBED BY APPLICABLE LAW AND REGULATIONS, INCLUDING THE ADMINISTRATIVE PROCEDURES ACT. SINCE COMMISSION MAY, AT SOME FUTURE DATE, BE CALLED ON TO ACT IN JURIDICAL CAPACITY, NRC MAY NOT REPEAT NOT DISCUSS SUBSTANTIVE ISSUES RAISED BY PETITION WITH EXECUTIVE BRANCH ON EXPARTE BASIS.

3. ALTHOUGH NRC HAS DETAILED PUBLISHED PROCEDURES FOR LICENSING OF AND INTERVENTION IN LICENSING PROCESS FOR PRODUCTION AND UTILIZATION FACILITIES (PRINCIPALLY POWER REACTORS), COMPARABLE PROCEDURES DO NOT REPEAT NOT EXIST FOR LICENSING OF SOURCE AND SPECIAL NUCLEAR MATERIAL, INCLUDING EXPORT LICENSING, ALTHOUGH LATTER ARE CURRENTLY UNDER STUDY BY NRC STAFF.

4. PETITION AND SUPPORTING AFFIDAVITS, WHICH WITH ANNEXES IS ALMOST FIFTY PAGES LONG, RAISES A BROAD SPECTRUM OF ISSUES WHICH COULD BROADLY BE DESCRIBED AS (A)PROCEDURAL, (B) COMMON DEFENSE AND SECURITY, (C) HEALTH AND SAFETY AND (D) ENVIRONMENTAL. AMONG THE MORE SIGNIFICANT ARE ALLEGATIONS THAT (A) NRC IS UNABLE TO MAKE FINDING ON ADEQUACY OF SAFEGUARDS SINCE IT DOES NOT HAVE SUFFICIENT INFORMATION FROM IAEA ON THE SAFEGUARDS SYSTEM APPLIED AT TARAPUR OR THE RESULTS OF AGENCY INSPECTIONS; (B) AS INDIA IS NOT A PARTY TO NPT, ISSUANCE OF THE LICENSE "FRUSTRATES AND IMPAIRS" THE NON-PROLIFERATION POLICY OF THE UNITED STATES, "DISCRIMINATES" AGAINST COUNTRIES WHICH HAVE JOINED NPT AND IS IN VIOLATION OF U.S. COMMITMENTS LIMITED OFFICIAL USE

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PAGE 03 STATE 053474

UNDER THE NPT; (C) U.S. FAILURE TO REQUIRE THAT INDIA ACCEPT SAFEGUARDS ON ALL ITS FACILITIES LEAVES INDIA FREE TO USE UNSAFEGUARDED FACILITIES TO DEVELOP NUCLEAR WEAPONS; (D) THE U.S. SHOULD REQUIRE BILATERAL SAFEGUARDS AT TAPS "AODITIONAL TO THOSE IMPLEMENTED BY THE IAEA"; AND (E) THAT U.S. HAS NOT REQUIRED MAINTENANCE OF AN EFFECTIVE PROGRAM FOR THE APPLICATION OF ADEQUATE HEALTH AND SAFETY STANDARDS OR AN ADEQUATE REPAIR AND MAINTENANCE PROGRAM AT

TAPS. ESSENTIALLY ALL OF THE OVER TWENTY-FIVE SPECIFIC ALLEGATIONS AND CHARGES HAVE BEEN AIRED AT THE RECENT SENATE GOVERNMENT OPERATIONS COMMITTEE HEARINGS ON THE EXPORT REORGANIZATION ACT OF 1976.

5. NEXT STEP WILL BE FOR NRC TO DETERMINE WHETHER PETITIONERS HAVE STANDING AS PERSONS "WHOSE INTEREST MAY BE AFFECTED" BY THE ISSUANCE OF THE LICENSE. NRC STAFF HOPES TO HAVE PAPER ON THIS SUBJECT READY FOR COMMISSION REVIEW BY END OF WEEK. IF STANDING IS DETERMINED, THEN NRC HEARING ON SUBSTANTIVE ASPECTS OF INTERVENORS' ALLEGATIONS,

EITHER LIMITED TO CERTAIN ISSUES OR IN THEIR ENTIRETY, WOULD BE HELD. IF SUCH HEARING HELD, IT PROBABLY COULD NOT TAKE PLACE UNTIL AT LEAST THIRTY DAYS AFTER NOTICE GIVEN IN FEDERAL REGISTER. IT ALSO IS POSSIBLE THAT NRC MAY HOLD A HEARING SOLELY FOR THE PURPOSE OF DETERMINING WHETHER PETITIONERS HAVE STANDING. IF NRC DETERMINES THAT THEY DO NOT REPEAT NOT HAVE SUCH STANDING OR RULES AGAINST THEM IN SUBSTANCE, PETITIONERS MAY CHALLENGE NRC'S DECISION IN COURTS.

6. DEPARTMENT AND ERDA REVIEWING ALL ASPECTS OF SITUATION, INCLUDING LEGAL ISSUES, ON URGENT BASIS WITH VIEW TO EXPEDITING APPROVAL OF EXPORT LICENSES AND WILL ADVISE ON PROPOSED COURSE OF ACTION SOONEST. YOU ARE AUTHORIZED TO SHARE ABOVE WITH INDIAN AEC. WE ARE KEEPING IN CLOSE TOUCH WITH INDIAN EMBASSY HERE. KISSINGER UQUOTE KISSINGER

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